



Chapter 4: Sanctions for Contempt of Court

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4.1 Statutory Provisions for Sanctions in Contempt Cases

There are two general provisions of the Revised Judicature Act that provide sanctions for contempt of court. MCL 600.1715; MSA 27A.1715, which contains the general penalties for criminal and civil contempt, states:

“(1) Except as otherwise provided by law, punishment for contempt may be a fine of not more than \$250.00, or imprisonment which, except in those cases where the commitment is for the omission to perform an act or duty which is still within the power of the person to perform shall not

exceed 30 days, or both, in the discretion of the court.

“(2) If the contempt consists of the omission to perform some act or duty which is still within the power of the person to perform, the imprisonment shall be terminated when the person performs the act or duty or no longer has the power to perform the act or duty which shall be specified in the order of commitment and pays the fine, costs, and expenses of the proceedings which shall be specified in the order of commitment.”

*See Section 4.4, below.

The foregoing general provisions apply unless another statute provides specific sanctions for a particular type of contempt.*

In addition to imposing a fine and/or a jail term, the court must order compensatory damages to persons suffering actual loss or injury as a result of the contumacious conduct. MCL 600.1721; MSA 27A.1721, states:

“If the alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay such person a sufficient sum to indemnify him, in addition to the other penalties which are imposed upon the defendant. The payment and acceptance of this sum is an absolute bar to any action by the aggrieved party to recover damages for the loss or injury.”

4.2 Jail Terms and Fines

A. For Civil Contempt

Following a finding of civil contempt, the court may order any or all of the following sanctions:

- a coercive and conditional jail sentence to compel the contemnor to comply with an order of the court, MCL 600.1715(2); MSA 27A.1715(2);
- a fine and costs and expenses of the proceedings, MCL 600.1715(1)–(2); MSA 27A.1715(1)–(2);
- damages for loss or injury caused by the contumacious conduct, MCL 600.1721; MSA 27A.1721, including attorney fees incurred as a result of the contumacious conduct, *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 758 (1990).*

*On damages under §1721 of the RJA, see Section 4.3, below.

B. For Criminal Contempt

Following a finding of criminal contempt, the court may order any or all of the following sanctions:

- an unconditional and fixed jail sentence of up to 30 days, MCL 600.1715(1); MSA 27A.1715(1);
- a fine of not more than \$250.00, MCL 600.1715(1); MSA 27A.1715(1);
- damages caused by the contumacious conduct, MCL 600.1721; MSA 27A.1721, including attorney fees incurred as a result of the contumacious conduct, *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 758 (1990).

C. Termination of Incarceration in Cases of Civil Contempt

In cases of civil contempt, the contemnor's incarceration must terminate when the contemnor complies with the court's order or loses the ability to comply with the court's order and pays the fine, costs, and expenses of the proceeding. MCL 600.1715(2); MSA 27A.1715(2), *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 758 (1990), and *People v Johns*, 384 Mich 325, 333 (1971).

D. Suspension of Fines in Cases of Civil Contempt

In cases of civil contempt, the judge may suspend payment of properly ordered fines based on a good behavior provision. See *Acorn Inc v UAW Local 2194*, 164 Mich App 358, 369 (1987).

E. Excessive "Civil" Fines

The United States Supreme Court has held that the imposition of severe fines for civil contempt renders the proceeding criminal, with all attendant due-process protections. In *United Mine Workers v Bagwell*, 512 US 821; 114 S Ct 2552; 129 L Ed 2d 642 (1994), the trial court found the union in contempt for unlawful strike-related activities. The trial court announced that it would impose a civil fine of \$100,000.00 for each violation involving violence and \$20,000.00 for each non-violent violation. When the union violated the injunction, it was found in contempt of court and ordered to pay \$52 million in fines to the state and two counties. The United States Supreme Court held that the fines were criminal, not civil, fines, and reversed because the union was not afforded the right to jury trial. The fines were not compensatory, and announcing them in advance did not render them coercive because the union had no opportunity to purge itself of the contempt after the fines were imposed. "The union's ability to avoid the fines was indistinguishable from the ability of any ordinary citizen to avoid criminal sanction by conforming his behavior to the law." *Id.*, at 837.

F. Cumulative Punishment

In cases of criminal contempt, the court may not impose consecutive sentences or cumulative fines for each contumacious act. For criminal contempts, the *maximum* sentence is 30 days in jail, and the *maximum* fine is \$250.00, for contempt of court. *Ann Arbor v Danish News Co*, 139 Mich App 218, 235–37 (1984) (construing previous version of §1715(1)).

*See also Section 5.14(C), for a discussion of repeated refusals to answer questions before a grand jury.

In cases of civil contempt, the maximum fine is \$250.00 for a single contempt citation. *In re Contempt of Johnson (Johnson v Salem Township)*, 165 Mich App 422, 428–29 (1988) (where there was no evidence of “continuing” or “reiterated” contempt, a per diem fine was improper under the general contempt statute, even though the contemnor’s conduct also violated a criminal ordinance that provided a fine for each day a defendant was in violation of the ordinance), and *Acorn Inc v UAW Local 2194*, 164 Mich App 358, 368–69 (1987) (it was improper to divide \$2,500.00 fine imposed on union among the 50 strikers cited for contempt for violating injunction).*

G. Fines and Alternative Jail Sentences in Criminal Contempt Cases

In any criminal case, if a fine or imprisonment is authorized by statute, the judge may impose a fine to be paid within a limited time, with a jail term as an alternative sentence. If the defendant fails to pay the fine, the judge may require the defendant to serve the alternative jail sentence imposed by the court. MCL 769.3; MSA 28.1075. The judge must consider the reasons for the defendant’s failure to pay before incarcerating the defendant. *Bearden v Georgia*, 461 US 660, 672; 103 S Ct 2064; 76 L Ed 2d 221 (1983). However, *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 223 (1966) suggests that a different rule applies to criminal contempt cases. In *Cross*, the Michigan Supreme Court held that where each defendant was given a monetary fine and a jail sentence, “with a proviso for an additional jail sentence for a fixed term upon failure to pay the fine,” the sentence was not authorized by the general contempt statute in effect at the time the case was decided. *Id.* (Emphasis in original.) The Court in *Cross* construed a predecessor to MCL 600.1715(1); MSA 27A.1715(1).

4.3 Mandatory Compensatory Sanctions

The language of the statutory provision allowing for compensatory sanctions, MCL 600.1721; MSA 27A.1721, suggests that such sanctions are mandatory.* That provision states:

“If the alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay such person a sufficient sum to indemnify him, in addition to the other penalties which are imposed upon the defendant. The payment and acceptance of this sum is an absolute

*For a detailed overview of this topic, see Stockmeyer, *Compensatory contempt*, 74 Mich B J 296 (1995).

bar to any action by the aggrieved party to recover damages for the loss or injury.”

Note: *In re Contempt of Dougherty*, 429 Mich 81, 97 (1987) suggests that compensatory damages are only available for civil contempts. However, the language of §1721 seems to allow them in any case. See *In re Contempt of Rochlin (Kane v Rochlin)*, 186 Mich App 639, 651 (1990), where the Court of Appeals declined to address the issue because it was not properly raised by the parties.

A. Determining the Amount of Loss or Injury

The burden of proof of loss or injury is on the party requesting compensation, who must show that the contemnor’s conduct caused actual loss or injury and the amount of the loss. *Montgomery v Muskegon Booming Co*, 104 Mich 411, 413 (1895), and *Homestead Development Co v Holly Twp*, 178 Mich App 239, 245 (1989). The party requesting compensation must be provided an opportunity to prove the amount of damage. *In re Contempt of Rochlin (Kane v Rochlin)*, 186 Mich App 639, 650–51 (1990). The court should employ general principles of damages to determine the amount of the award. *Birkenshaw v City of Detroit*, 110 Mich App 500, 510 (1981).

Where the contempt consists of the violation of an injunction, damages are limited to the injury caused by the violation. If the injury was caused before the injunction entered, the plaintiff is limited to the remedy provided in the original decree or another appropriate remedy and may not recover damages under the general contempt statute. *Wilkinson v Dunkely-Williams Co*, 150 Mich 253, 255 (1907).

B. Per Diem Damages

The court may order a per diem amount of damages for continuing contempt. Such an award of damages is subject to a later determination once the contempt abates. *Catsman v City of Flint*, 18 Mich App 641, 651 (1969).*

C. Damages and Conditional Jail Sentences in Civil Contempt Cases

If the court orders the contemnor to pay damages to avoid the jail sentence, the contemnor must have the ability to pay those damages. *Gonzalez v Gonzalez*, 121 Mich App 289, 291 (1982).

D. Costs of Court Proceedings

An attorney found in contempt of court for failing to appear in court at the scheduled time may properly be ordered to reimburse the county for costs in impaneling the jury. *In re Contempt of McRipley (People v Gardner)*, 204 Mich App 298, 301–02 (1994).

*Per diem damages should be distinguished from fines, which are limited to \$250.00 per single contempt citation. See Section 4.2(F), above.

E. Attorney Fees

Compensatory sanctions may include the opposing party's reasonable attorney fees. *Homestead Development Co v Holly Twp*, 178 Mich App 239, 245–46 (1989), and *Burnett v Burnett*, 152 Mich App 157, 161 (1986). Recoverable attorney fees include those incurred in seeking the contempt order, those incurred in litigation caused by the contempt, and those incurred in determining the amount of damages. *Plumbers and Pipefitters Local No 190 v Wolff*, 141 Mich App 815, 818–19 (1985), *Birkenshaw v City of Detroit*, 110 Mich App 500, 510 (1981), and *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 764 (1990).

When the opposing party challenges the reasonableness of the fees requested, the court must conduct an evidentiary hearing. To determine a reasonable amount of fees in a given case, the court must consider the factors and guidelines set forth in *Wood v DAIIE*, 413 Mich 573, 588 (1982), and *Howard v Canteen Corp*, 192 Mich App 427, 437 (1992). The court must make findings of fact regarding its award of attorney fees. *B & B Investment Group v Gitler*, 229 Mich App 1, 15–17 (1998).

4.4 Statutory Exceptions to the General Penalty Provisions of the Revised Judicature Act

MCL 600.1715(1); MSA 27A.1715(1), provides that the general penalty provisions for contempt of court contained in §1715 of the Revised Judicature Act apply to cases of contempt, “except as otherwise provided by law.” The following subsections summarize some of the statutory exceptions to the general penalty provisions in §1715 of the Revised Judicature Act.

A. Failure of Witness to Obey Subpoena or Discovery Order

MCL 600.1725; MSA 27A.1725,* states:

“If any witness attending pursuant to a subpoena, or brought before any court, judge, officer, commissioner, or before any person before whom depositions may be taken, refuses without reasonable cause

“(1) to be examined, or

“(2) to answer any legal and pertinent question, or

“(3) to subscribe his deposition after it has been reduced to writing, the officer issuing the subpoena shall commit him, by warrant, to the common jail of the county in which he resides. He shall remain there until he submits to be examined, or to answer, or to subscribe his deposition, as the case may be, or until he is discharged according to law.”

*See also MCR 2.506.

Thus, coercive commitment appears to be mandatory under this section, and no provision is made for a fine.*

*See Section 5.4 for a more detailed discussion.

B. Failure of Grand Jury Witness to Testify

MCL 767.19c; MSA 28.959(3), provides that a person who fails to testify before a grand jury when summoned may be punished by a fine not exceeding \$10,000.00, incarceration for up to one year, or both.*

*See Section 5.14 for a more detailed discussion.

C. Failure to Pay Child or Spousal Support

Several sections of the Support and Parenting Time Enforcement Act, MCL 552.601 et seq.; MSA 25.164(1) et seq., govern support arrearages and associated sanctions. MCL 552.633; MSA 25.164(33), provides that if the payer has a present capacity to pay some or all of the arrearage from “currently available resources,” then the court may commit the payer to jail for up to 45 days (for a first violation) or 90 days (for subsequent violations), with or without work release. MCL 552.635; MSA 25.164(35), provides that if by the exercise of diligence the payer could have the capacity to pay all or some of the amount due and has failed or refused to do so, then the court may commit the payer to jail for up to 45 days (for a first violation) or 90 days (for subsequent violations), with work release. See MCL 552.637(4); MSA 25.164(37)(4), for the statutory provisions listing these penalties.*

*See Section 5.9 for a more detailed discussion.

D. Failure to Comply With Parenting Time Order in Divorce Judgment

MCL 552.644(2) and (3); MSA 25.164(44)(12) and (3), provide a wide variety of responses to and sanctions for the failure to obey a parenting time order in a divorce judgment. Sanctions include a fine of not more than \$100.00, commitment to jail for up to 45 days (for a first violation) or 90 days (for subsequent violations), with mandatory release if the court has reasonable cause to believe that the parent will comply with the order. MCL 552.644(2)(e) and (f) and (3); MSA 25.164(44)(2)(e) and (f) and (3).*

*See Section 5.10 for a more detailed discussion.

E. Failure to Abate Public Nuisance

MCL 600.3820; MSA 27A.3820, provides the penalty for a person’s failure to obey an injunctive order to abate a public nuisance. The person must be punished by a fine of not more than \$1,000.00, incarceration for not more than six months, or both.*

*See Section 5.7 for a more detailed discussion.

4.5 Assignment of Bond for Recovery of Damages

MCR 3.606(C) provides for the giving of bond in lieu of the arrest of the alleged contemnor.* MCR 3.606(D) provides for recovery of damages from the bond, as follows:

*See Section 3.13.

“The court may order assignment of the bond to an aggrieved party who is authorized by the court to

prosecute the bond under MCR 3.604(H). The measure of the damages to be assessed in an action on the bond is the extent of the loss or injury sustained by the aggrieved party because of the misconduct for which the order for arrest was issued, and that party's costs and expenses in securing the order. The remainder of the penalty of the bond is paid into the treasury of the county in which the bond was taken, to the credit of the general fund."

4.6 Requirements for Court's Opinion and Order

As in all bench trials, the court is required in contempt proceedings to state its factual findings and conclusions of law either on the record or in a written opinion. MCR 2.517. See also *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 758 (1990) (Court of Appeals must state findings and conclusions when adjudging contempt of its orders). The court's findings and conclusions should include:

- factual findings;
- burden of proof employed;
- type of contempt committed;
- a conclusion as to how the contumacious conduct impaired the authority or impeded the functioning of the court;
- the sanctions imposed; and
- the reasons for imposing sanctions. *Johnson v Wynn*, 38 Mich App 302 (1972).

See also MCR 2.602 (procedure for entry of civil judgment) and MCR 6.103 (procedure for entry of criminal judgment).

In civil contempt cases, the court's order of commitment must specify that "the imprisonment shall be terminated when the person performs the act or duty or no longer has the power to perform the act or duty. . . and pays the fine, costs, and expenses of the proceedings. . . ." MCL 600.1715(2); MSA 27A.1715(2).

If a member of the state bar is held in contempt of court, the clerk of the court must submit a certified copy of the order to the clerk of the Michigan Supreme Court and the state bar. MCL 600.913; MSA 27A.913.

4.7 Appeals of Contempt Orders

A. Appeals to Circuit Court and Court of Appeals

Final judgments of the circuit court and Court of Claims are appealable as of right to the Court of Appeals. MCL 600.308(1); MSA 27A.308(1). Final judgments of the district court and probate court are appealable as of right

to the circuit court. Appeals to the Court of Appeals of judgments entered by the circuit court on appeals from lower courts are by application for leave to appeal. MCL 600.8342(3); MSA 27A.8342(3), and MCL 600.863(1); MSA 27A.863(1).

A judge's refusal to find a party in contempt may be reviewed only by a complaint for an order of superintending control, not by appeal or cross-appeal. *Shelby Twp v Liquid Disposal, Inc*, 71 Mich App 152, 154 (1976), and *Barnett v Int'l Tennis Corp*, 80 Mich App 396, 415 (1978).

B. Standard of Review

Issuance of an order finding a person in contempt of court rests in the sound discretion of the judge. *In the Matter of the Contempt of Balfour Peisner (People v Jackson)*, 78 Mich App 642, 643 (1977). A finding of contempt or a refusal to find a person in contempt may be reviewed only for abuse of discretion. *Mason v Siegel*, 301 Mich 482, 484 (1942), and *In the Matter of Lafferty*, 28 Mich App 654, 655 (1970) (court's exercise of summary contempt power reviewable on appeal). The appellate court will not weigh the evidence or determine the credibility of witnesses; if evidence in the record supports the lower court's findings, the lower court will be affirmed. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 217–18 (1966).

C. Waiver of Irregularities in Initiating Proceedings

In cases of indirect contempt, if no affidavit is filed, the alleged contemnor waives the irregularity in initiation of the proceedings by voluntarily appearing before the court and defending against the charge. *In re Huff*, 352 Mich 402, 413 (1958). In *In re McHugh*, 152 Mich 505, 512 (1908), the Supreme Court stated:

“If the respondents had refused to appear in court, as was the case in *Re Wood*, 82 Mich. 75, or if they had been arrested upon the capias and had denied the jurisdiction of the court for the reason that no affidavit or petition was presented to the court setting forth the facts, the respondents would have been in a position to raise this question, but their conduct waived it. They voluntarily placed themselves in precisely the same position as they would have been if the proceeding had been such as they now contend was necessary.”

If, however, the defendant appears and challenges the court's jurisdiction, the defendant does not waive irregularities in the initiation of the proceedings. *In re Henry*, 25 Mich App 45, 51–52 (1970).

4.8 Double Jeopardy

*For a more detailed treatment of double jeopardy, see Lovik, *Domestic Violence: A Guide to Civil & Criminal Proceedings* (MJJ, 1998), §9.11, and *Managing a Trial Under the Controlled Substances Act* (MJJ, 1995), Chapter 9.

The guarantee against double jeopardy “prohibits the Government from punishing twice, or attempting a second time to punish criminally for the same offense.” *United States v Ursery*, 518 US 267; 116 S Ct 2135; 135 L Ed 2d 549 (1996). “Criminal” sanctions trigger double jeopardy protections.* Because criminal contempt sanctions clearly have a punitive purpose, the United States Supreme Court has held that double jeopardy protections attach in non-summary criminal contempt proceedings. *United States v Dixon*, 509 US 688, 696; 113 S Ct 2849; 125 L Ed 2d 556 (1993).

Civil contempt sanctions are remedial or coercive and are therefore not typically subject to double jeopardy protections against multiple punishment. Accordingly, the United States Supreme Court has held that a person may be subjected to both criminal and civil sanctions for the same act, as long as the civil sanctions serve a purpose distinct from punishment. *Yates v United States*, 355 US 66, 74; 78 S Ct 128; 2 L Ed 2d 95 (1957). In *Yates*, the United States Supreme Court upheld the imposition of both civil and criminal contempt sanctions for a single continuing act of contempt, reasoning that “the civil and criminal sentences served distinct purposes, the one coercive, the other punitive and deterrent.”

Section 1745 of the Revised Judicature Act deals with multiple punishments for misconduct that constitutes both criminal contempt and a criminal offense. MCL 600.1745; MSA 27A.1745, states:

“Persons proceeded against according to the provisions of this chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction shall be had on such indictment shall take into consideration the punishment before inflicted, in imposing sentence.”

In *People v McCartney (On Remand)*, 141 Mich App 591 (1985), the defendant, a conservator of her minor daughter’s estate, was held in criminal contempt of court for violating a court order. Subsequently, a prosecution for embezzlement was initiated. The Court of Appeals initially held that trying the defendant for embezzlement would violate the prohibitions against double jeopardy. On remand from the Supreme Court, the Court of Appeals found, in the language of MCL 600.1745; MSA 27A.1745, clear legislative intent to allow separate punishment of a person found in criminal contempt of court if the contemptuous acts also violated a criminal statute. *Id.*, at 596. However, the Court of Appeals noted that the prior contempt decision should be considered in the imposition of a sentence in the criminal case, as required by §1745. See also *In re Murchison*, 340 Mich 151, 155–56 (1954) (perjury may be punished criminally and as contempt of court because the act of falsely swearing constitutes “two offenses, one against the State and the other against the court”).